

(4)  
No. 89-163

Supreme Court, U.S.

FILED

NOV 15 1989

JOSEPH P. ANIOL, JR.  
CLERK

**In the Supreme Court of the United States**

OCTOBER TERM, 1989

UNITED STATES OF AMERICA, PETITIONER

v.

GUADALUPE MONTALVO-MURILLO

ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

**JOINT APPENDIX**

BERNARD J. PANETTA, II  
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CABALLERO, PANETTA & ORTEGA  
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*Counsel for Respondent*

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**PETITION FOR A WRIT OF CERTIORARI**  
**FILED JULY 28, 1989**  
**CERTIORARI GRANTED OCTOBER 2, 1989**

51 p/2

# In the Supreme Court of the United States

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v.

GUADALUPE MONTALVO-MURILLO

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*ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT*

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## JOINT APPENDIX

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\* The opinion and order of the district court and the opinion and judgment of the court of appeals were attached as appendices to the petition and are not reproduced herein.

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**Chronological List of Relevant Docket Entries**

**A. United States District Court for the Northern District of Illinois**

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UNITED STATES OF AMERICA

v.

GUADALUPE MONTALVO-MURILLO

No. 89-CR-125 (N.D. Ill.)

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**PROCEEDINGS**

- 02/10/89 Case assigned to MAGISTRATE GOTTSCHALL (Dkt'd 02/21/89). US Attorney CESAR—GARZA, THERESE added to case (Dkt'd 02/21/89).
- 1 Filed affidavit in removal proceedings (Rule 40) (Dkt'd 02/21/89). Defendant's first appearance (Dkt'd 02/21/89).
- 2 Defendant informed of rights (MAGISTRATE GOTTSCHALL) (Dkt'd 02/21/89).
- 2 Order appointing attorney GREEN, CANDICE to represent defendant (order appointing counsel attached) (MAGISTRATE GOTTSCHALL) (Dkt'd 02/21/89).

(i)

**PROCEEDINGS**

- 2 Removal hearing waived (Defendant waives his right to identity hearing, bail hearing and probable cause hearing in this District. Defendant reserves his right to detention hearing and probable cause hearing in New Mexico.) (MAGISTRATE GOTTSCHALL) (Dkt'd 02/21/89).
- 2 Order defendant removed to other district (Rule 40) 1084-2  
(Order defendant removed to the U.S. District of New Mexico. Defendant ordered to be released to Federal Agents Richard Sanders and Ken Muir for transportation to New Mexico.) (MAGISTRATE GOTTSCHALL) (Dkt'd 02/21/89).
- 3 Filed appearance of GREEN, CANDICE as attorney for defendant (Dkt'd 02/21/89).
- 03/02/89 5 Transmitted documents to 1084-2 (Las Cruces, New Mexico) (Dkt'd 03/02/89).
- 03/09/89 6 Filed return of transmittal Letter acknowledging receipt of documents on 3/7/89 at Las Cruces, New Mexico (Dkt'd 03/13/89).

**Chronological List of Relevant Docket Entries****B. United States District Court for the District of New Mexico**


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UNITED STATES OF AMERICA

v.

GUADALUPE MONTALVO-MURILLO

No. CR-89-550 (D. N.M.)

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**MAGISTRATE PAPERS**

2-10-89	Complaint Warrant for Arrest
2-16-89	Order of Temp. Det/ Pending Hearing Pursuant to Bail Reform Act Entry of Appearance by Bernard Panetta, II
2-21-89	Opposition by Deft of Detention Without Bond
*2-17-89 2/21/89	Motion by Govt. for Detention Entry of Appearance of Angel Saenz as local counsel
3/7/89	Following paperwork rec'd from E/D of Illinois: 1. Cert Copy of Docket Sheet 2. AFFIDAVIT of Complaint/Indictment in Removal Procd 3. COMPLAINT 4. WARRANT FOR ARREST (JAD) 2/10/89

## MAGISTRATE PAPERS

5. HEARING ON REMOVAL
6. ORDER APPOINTING FPD AS COUNSEL
7. APPEARANCES FILED BY ATTYS.

\*2/21/89 DETENTION HRG before JAD.  
Counsel & deft & Interpreter present.  
Bond Set \$50,000 Unsecured/3rd Pty  
Custody & co-signed by wife. \$50,000  
Bail Bond or \$50,000 Cash also ap-  
proved. USA given until 10:00 AM  
2/22/89 to appeal.

2-22-89 NOTICE of Appeal (JAP) See reverse  
side of docket sheet.

## PROCEEDINGS

2-17-89 1 INDICTMENT

2-21-89 1 ARRAIGNMENT. Counsel and deft  
present. Plea of NG. OHR and Mo-  
tions by 2/6/89. Trial date not set,  
judge's office will notify. (JAD) Tape:  
89-7B

2/22/89 2a NOTICE OF APPEAL by Govt. of Mo-  
tion for Revocation of Conds. of Rel.

2/23/89 2b COURT IN SESSION: Bob Gorence for  
pltfs, Mary Stillinger for deft. Court  
will listen to tape when arrives from Il-  
linois and notify counsel by telephone  
re: ruling.  
10:36AM to 3:03PM Judge Parker  
reptr/Macia

3-1-89 3 ORDER SETTING CONDITIONS OF  
RELEASE—\$88,500 property bonds  
secured by the execution and delivery of

## PROCEEDINGS

mortgages of other legal instruments  
covering the unencumbered assets of  
deft and his wife. Deft and wife shall  
provide at their expense, information  
showing that the residence and 1984  
Pontiac Firebird are unencumbered.  
3rd Party w/restrs. (JAP and JAD)

4 MEMORANDUM OPINION AND OR-  
DER—plaintiff appeal from the  
Magistrate's oral ruling that he would  
enter an order setting conditions of  
release is denied and Magistrate's pro-  
posed conditions of release, as  
amended in accordance with Memoran-  
dum Opinion and Order will be set  
forth in a separate order setting condi-  
tions of release, which will be entered  
by this Court. (JAP) EOD: 3-3-89  
Copies by CO

3-2-89 5 MOTION by USA for Stay Pending Ex-  
pedited Appeal

6 ORDER—the enforcement of the Memo-  
randum Opinion and Order and the  
Order Setting Conditions of Release  
filed March 1, 1989 is stayed until 5:00  
PM Thursday, March 9, 1989. (JAP)  
EOD: 3-3-89 Copies by CO

7 NOTICE OF APPEAL by USA from the  
Order of Release entered by the District  
Court on March 1, 1989.  
Distribution of NOA as follows: (SPE-  
CIAL BAIL RECORD)  
To Deft: Copy of NOA



**PROCEEDINGS**

To USCA: Copy of NOA, docket entries, desig ltr. and copy of Judgment

To Appellant: Copy of NOA, docket entries w/cert of desig attached; transcript order form, desig ltr (USCA form ltrs), and 10th Circuit Procedures.

To Appellee: Copy of NOA, 10th Circuit Procedures copy of docket entries w/cert of desig attached & desig ltr.

To Court Reporter: Copy of NOA, docket entries & desig ltr.

To Judge: Copy of NOA

To USM: Copy of NOA

To Probation: Copy of NOA

To Pretrial Services: Copy of NOA

3/6/89 8 ORDER that Gov't Motion for Stay Pending Expedited Appeal is granted. (JEC) EOD: 3/6/89 Copies by CO.

3/7/89 8A TRANSCRIPT Order from Appellant ordering Transcripts of Detention Hrg before (JAD) 2/16/89 & 2/21/89 & Transcript of Initial & Waiver of Removal Hrg before Magistrate Gottshall.

3/10/89 9 NOTICE by appellant or ordering transcript. 1c

3/13/89 10 NOTICE by Rptr est. completion date 3/15/89.

3/13/89 11 COPY ORDER from USCA record & transcripts be prepared & transmitted by Clerk of DC no later than 3/17/89.

**PROCEEDINGS**

3/17/89 12 NOTICE by rptr transcripts completed 3/17/89 & filed w/Clerk's Office. 1c

\*3/13/89 TRANSCRIPT of Detention Hrg of 2/16/89 before (JAD) received.

\*3/13/89 TRANSCRIPT of Initial & Waiver of Removal Hrg on 2/10/89 received.

\*3/13/89 TRANSCRIPT of Detention Hrg on 2/21/89 received.

3/17/89 TRANSCRIPT of Proceedings of Appeal from Detention Order received (original & one)

3/17/89 RECORD ON APPEAL re: Special Bail in five volumes mailed to USCA (copies only). 1c

4/17/89 13 MOTION by deft to allow deft to file pre-trial motions. 1c

4/17/89 14 MOTION by deft for Continuance. 1c

4/18/89 15 ORDER motion of deft file pretrial motions granted: Court will accept & consider deft's pretrial motions, notwithstanding fact that more than ten days have elapsed since deft arraigned (JEC) Distr by C/O.

4/18/89 16 ORDER deft's Motion for Continuance granted; cause rescheduled for June 1989 docket; period of time from 4/14/89 to June 1, 1989 is excludable time within meaning of Speedy Trial act. (JEC) EOD: 4/18/89 Distr by C/O.

4/18/89 17 MOTION by deft to Suppress.

18 MEMO of Law support Motion to Suppress. 1c

4/25/89 19 RESPONSE by Govt. to Motion to Suppress. ds

## PROCEEDINGS

\*3/27/89 RECEIPT acknowledged by USCA of  
Record on Appeal on 3/23/89 1c

5/18/89 20 CC Order from USCA, order of UCSA  
staying USDC order entered 3/1/89, is  
vacated; deft shall be released forth-  
with, with terms provided in District  
Court's order of 3/1/89. (Hoecker)

5/22/89 21 ORDER Set conds of Rel. \$88,500.00  
(bond) PROPERTY BOND  
3rd pty custody:  
Elisa Madrigal Salgado  
2000 Lake Huron  
El Paso, Texas (855-8099)  
Deft: same address

5/22/89 22 AGREEMENT to Forefeit Property.  
(SEC)

5/22/89 23 APPEARANCE BOND sum of \$88,500.  
Deed to Residence & Certificate of Title  
(1984) (Pontiac Firebird.

5/22/89 24 WAIVER of Homestead.

5/22/89 25 AFFIDAVIT of Guadalupe Montalvo-  
Murillo.

5/22/89 26 AFFIDAVIT of Elisa Salgado Montalvo.

5/22/89 27 THE FOLLOWING ENCLOSED IN  
SEALED ENVELOPE TO PROTECT  
DOCUMENTS:  
Original Certificate of Title of Vehicle  
1984 Firebird  
Special Warranty Deed—Property 2000  
Lake Huron, El Paso, Texas  
Warranty Deed  
El Paso Central Appraisal District of Real  
Property  
First American Title Ins. Co.

## PROCEEDINGS

Letter from Ticor Title Ins. to Mr. Lalo  
Ortiz re: Property 2000 Lake Huron, El  
Paso, Texas

5/24/89 NOTE from Judge Parker's office re:  
Memo Opinion & Order dated March 1,  
1989 for publication.

5/30/89 \*Memo opinion & order dated 3/1/89  
sent for publication.

6/20/89 28 PETITION for Action on Conditions of  
Pretrial Release—Order that a warrant  
be issued for Deft to show cause why  
his conds. should not be revoked.  
(SGB)

6/9/89 Warrant issued by Judge Buell for viola-  
tion of conds. of release.

6/27/89 29 CC of Judgment and Opinion from  
USCA, 10th Circuit, which constitutes  
the mandate of this Court AFFIRM-  
ING the decision of the District Court  
Ordering the release of the Deft. ds

7/7/89 30 GOVT'S REQUESTED JURY IN-  
STRUCTIONS. DS

7/10/89 31 8:15 a.m. COURT IN SESSION. Counsel  
Mary Stillenger for Deft. and Robert  
Gorence for Govt. present. Deft. not  
present. Govt. moves to forfeit bond  
and seize the house. Ct. asks Govt. to  
prepare Order granting forfeiture.

8:18 a.m. COURT IN RECESS. (JEC)  
Rptr. Harris

7/12/89 32 NOTICE and Motion by Govt. to Forfeit  
Bond and Enter Judgment. ds

7/17/89 33 ORDER that the Hrg. on Gov't Motion  
for Forfeiture of Bond is set for

**PROCEEDINGS**

7/21/89 at 8:00 a.m. before Judge Conway. (JEC) EOD: 7/18/89 Copies by JO and CO. ds

7/21/89 34 CLERK'S MINUTES: -GOVT'S MOTION FOR FOREFEITURE.

8:00 A.M. In Session Court allows forfeiture, Govt. to prepare order.

8:05 A.M. Recess. Pres Torres to USA Mary Stillinger for Deft. (JEC) Rptr: Julie for B. Harris.

8/1/89 35 JUDGMENT-ORDER that Deft's bond in the amt of \$88,500 secured by deft's residence be forfeited and USA have judgment against Deft. of 2000 Lake Huron, El Paso, TX 79936 in the amt. of \$88,500.00 (JEC) EOD: 8/1/89 Copies by CO. ds

8/17/89 36 ORDER that Deft's Motion to Suppress is held in abeyance until such time as deft. is no longer a fugitive. An evidentiary hearing will be held at that time. (JEC) EOD: 8/17/89 Copies by CO ds

**Chronological List of Relevant Docket Entries****C. United States Court of Appeals for the Tenth Circuit**


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UNITED STATES OF AMERICA

v.

GUADALUPE MONTALVO-MURILLO

No. 89-2056 (10th Cir.)

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**PROCEEDINGS**

3/8/89	1	[332689] Criminal case docketed. Preliminary record filed. (kmh)
3/8/89	2	[332691] Appellant's motion filed by Appellant USA for stay of defendant's release on bail. 89-2056]. Original and 3 copies c/s: y (kmh)
3/9/89	4	[332991] Appellant's motion(s) Appellant/Petitioner motion for stay of release on bail submitted to panel. (kmh)
3/9/89	5	[332999] Order filed by Judge(s) Moore, Anderson, Tacha-response to motion for stay (simultaneous memo briefs) due 3/16/89 for Guadalupe Montalvo-Murillo, for USA, Reply briefs, if any, shall be filed no later than 3/21/89 at 5:00 P.M. - Record on Appeal due (shall be transmitted no later than 3/17/89) for James A. Parker pursuant



## PROCEEDINGS

to Rule 11.1., directing that transcript be filed by 3/17/89 for Charlotte Macias (kmh)

- 3/9/89 6 [333033] Order filed Judge(s) Moore, Anderson, Tacha granting Appellant/Petitioner motion for stay of defendant's release on bail pending further order of this court. [332691-1] (kmh)
- 3/13/89 10 Acknowledgement of transcript order filed by USA. (kmh)
- 3/13/89 11 [335031] Designation of record filed by Appellant USA. Original and n/a copies. [89-2056] Appellee's designation of record due 3/27/89 for Guadalupe Montalvo-Murillo (kmh)
- 3/16/89 7 [334729] Appellee's response filed by Montalvo-Murillo. Original and 3 copies. c/s: y (kmh)
- 3/16/89 8 [334745] Appellant's response filed by USA Original and 4 copies. c/s: y (kmh)
- 3/21/89 13 [335564] Appellee's reply brief filed by Guadalupe Montalvo-Murillo. Original and 3 copies. c/s: y (kas)
- 3/23/89 15 [336156] Special bail record on appeal filed: 5 Volume(s)-Copy filed in Volume(s) (y/n): n. Volume I (pleadings) Volumes II through V (transcript). (kmh)
- 3/23/89 17 [336176] Transcript order form filed by Charlotte Macias William L. Lutz, Robert J. Gorence. (kmh) -

## PROCEEDINGS

- 5/3/89 [345731] Case submitted to panel on the briefs pursuant to Rule 34. Moore, Anderson, Tacha (kas)
- 5/11/89 19 [347633] Appellee's motion to vacate stay of district court order. filed by Guadalupe Montalvo-Murillo. Original and 3 copies. c/s: y (kmh)
- 5/15/89 21 [34258] Appellee's motion(s) Appellee/Respondent motion to vacate stay submitted to panel. (kmh)
- 5/16/89 22 [348265] Order filed by Judge(s) Moore, Anderson, Tacha granting Appellee/Respondent motion to vacate the order of this court of 3/9/89 staying the U.S.D.C for the D. of NM entered 3/1/89. Defendant is to be released forthwith in accordance with the terms provi[d]ed in the district court's order of 3/1/89. [347633-1] (kmh)
- 5/31/89 23 [351217] Published per curiam opinion filed by Moore, Anderson, Tacha, judgment affirmed. [89-2056] (kmh)
- 6/22/89 25 [346213] Mandate issued. Mandate receipt due 7/24/89 Record on appeal return due 10/20/89 (kas)
- 6/29/89 26 [358580] Mandate receipt filed. (tc)
- 10/6/89 27 [381373] Supreme Court order dated 10/2/89 granting certiorari filed. (afw)

Transcript of Initial and Waiver of Removal Hearing  
(N.D. Ill. Feb. 10, 1989)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

89-CR-125

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

GUADALUPE MONTALVO-MURRILLO, DEFENDANT

INITIAL & WAIVER OF REMOVAL HEARING

BE IT REMEMBERED that on to-wit, the tenth day of February, 1989, the above-entitled matter came on for hearing before the HONORABLE UNITED STATES MAGISTRATE GOTTSALL, sitting in open court in Illinois.

APPEARANCES

FOR THE PLAINTIFF:

MS. THERESA GARZA  
United States Attorney

FOR THE DEFENDANT:

MS. CANDICE GREEN  
Attorney at Law

THE INTERPRETER:

MR. ROBERTO MENDOZA

\* \* \* \* \*

[2] COURT CLERK: 89-CR-125, United States of America versus Guadalupe Montalvo-Murrillo.

MS. GARZA: Good afternoon. Theresa Garza, on behalf of the United States.

MS. GREEN: Good afternoon, Your Honor. Candice Green on behalf of Mr. Murrillo, present in Court with the assistance of an interpreter, Roberto Mendoza.

THE COURT: It's Mr. Murrillo, is that correct?

THE INTERPRETER: Yes.

THE COURT: So the purpose of this proceeding is to advise you of the charge against you and to advise your rights and discuss the question of bond. You will not be [3] asked to say anything today about what you did or did not do in connection with this charge.

Now, you have a right to counsel, to an attorney, at every important stage of the proceedings, including the proceeding today. And if you cannot afford to hire a lawyer, the Court will appoint a free lawyer for you, if you wish. But you also have a right to hire a lawyer of your choice if you have the means to do that, and you have a right to represent yourself.

Whatever you choose, you have the right to consult with your lawyer and to have the assistance of your lawyer at any time that any agent or authority of the government seeks to question you.

Do you understand those rights?

THE INTERPRETER: Yes.

THE COURT: I take it that Mr. Murrillo doesn't have his own lawyer with him today?

MS. GREEN: That's correct, Judge.

THE COURT: He has not filled out a financial affidavit yet?

MS. GREEN: He has not, Your Honor. I just assumed, because it was a remove [sic] proceeding, that he would most likely be getting an appointed attorney down (inaudible).

THE COURT: Mr. Murrillo, would you like me to appoint counsel for you just for purposes of this hearing today?

[4] THE INTERPRETER: Yes.

THE COURT: All right. What is the nature of the charge in this case?

MS. GARZA: Your Honor, the defendant is charged in the District of New Mexico with violations of 841—Title 21 841 subsection (a)(1) and 841 subsection (b)(1), and we are here on a removal complaint, Your Honor.

THE COURT: So, Mr. Murrillo, you are charged with an offense in the District Court in New Mexico and the purpose of this proceeding is to determine whether you should be sent to New Mexico to deal with the charge. Do you understand that?

THE INTERPRETER: Yes.

THE COURT: All right. Now, I understand that counsel has reached some kind of agreement respecting bond in this case?

MS. GARZA: That's correct, Your Honor. As I indicated, we are here on a removal proceeding and the government was going to move for detention, however, after having consulted with Ms. Candice Green, we have determined that we can come to the agreement that if the defendant were immediately removed from our district and taken to the charging district; that is, the District of New Mexico, that we would not hold the detention hearing here and they would waive their right at this point and, however, not waive any rights to [5] preliminary hearings or detention hearings in that district.

THE COURT: There is no indictment in this case, is that right? It's a complaint?

MS. GARZA: No, it's a complaint, Your Honor. The defendant was just arrested in New Mexico.

THE COURT: All right.

MS. GARZA: And he had flown to our district because there was an attempt at some cooperation effort. He was arrested in New Mexico and he is just being brought before you based on that.

THE COURT: Oh, all right.

MS. GREEN: That's correct, Your Honor. We would waive any issue of identity at this point and also reserve the right to a preliminary hearing down in New Mexico and also a bond review down in New Mexico—New Mexico.

THE COURT: But bond was set earlier in New Mexico? Is that what happened?

MS. GARZA: No. That is not correct, Your Honor.

THE COURT: Oh, Mr. Murrillo was in custody?

MS. GREEN: I believe he was in custody and they transported him directly here.

MS. GARZA: That's correct. He was arrested and agreed to cooperate and was transported here.

THE COURT: Okay. Have to think this through a minute. This is different from anything I ever heard of before.

[6] All right. I guess I don't see any—Mr. Murrillo isn't here because he just happened to be here? He's here—

MS. GARZA: Yes, Your Honor. It's a little bit of a unique situation, but, nonetheless, I think the removal proceeding is the applicable one. He was arrested for an offense—

THE COURT: I understand.

MS. GARZA: —in New Mexico and transported here only for the purpose of his cooperating in the delivery of the narcotics.

THE COURT: All right.

Mr. Murrillo, it's the government's position, and the case is somewhat unusual, but I think it's probably more protective of your rights than proceeding any other way,



but before you can be sent back to New Mexico, you are entitled to a probable cause determination in this Court; that is, a determination of whether there's probable cause to believe that you committed an offense.

You are entitled to a determination of whether you are the person named in the complaint, and you are entitled to a hearing on the question of whether bond should be set or whether you should be out on custody.

Now, my understanding is that Ms. Green, who is representing you for purposes of these proceedings, and the [7] government have agreed that the best way to deal with the case is simply to have you sent back to New Mexico, to waive your right to have the issue of identity and probable cause determined here, and to have the Court in New Mexico rule on the bond question — on the bail question.

Is that agreeable to you?

MS. GREEN: As well as on a preliminary — we are not waiving preliminary —

THE COURT: You are not waiving —

MS. GREEN: That's right.

THE COURT: — waiving preliminary examination?

You are only basically entering into an agreement which will have the Court in New Mexico, rather than the Court here, make that probable cause determination?

MS. GARZA: That's correct, Your Honor.

THE COURT: Is that acceptable?

THE INTERPRETER: Yes. They want me to, I am with them.

THE COURT: All right. I — you have talked to Ms. Green about it? You have had some chance to consult, is that right?

THE INTERPRETER: Yes.

She is this lady, right?

THE COURT: Yes. Yes.

THE INTERPRETER: Yes.

THE COURT: All right. Then we will enter an order of [8] removal specifically reserving the issues of intention [sic] detention and probable cause for determination by the District Court in New Mexico, and I take it Mr. Murrillo is going to be transported promptly, is that right?

MS. GARZA: He is going to be transported late this afternoon, Your Honor, and we would ask also that if it — if the United States Marshals require that an order be entered, that he can be released to the custody of Richard Sanders and Agent Ken Muir. Agent Sanders is from the DEA in New Mexico, in the District of New Mexico, and Ken Muir is a customs agent — customs agent from New Mexico, and that he be released in their custody for transporting him to New Mexico.

THE COURT: All right. It will be so ordered.

MS. GREEN: Thank you very much.

THE COURT: Court stands —

(THEREUPON, the proceedings were in recess.)



**Transcript of Detention Hearing  
(D. N.M. Feb. 16, 1989)**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

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89-CR-550

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

GUADALUPE MONTALVO-MURRILLO, DEFENDANT

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**DETENTION HEARING**

BE IT REMEMBERED that on to-wit, the sixteenth day of February, 1989, the above-entitled matter came on for hearing before the HONORABLE UNITED STATES MAGISTRATE JOHN DARDEN, sitting in open court at Las Cruces, New Mexico.

**APPEARANCES**

**FOR THE PLAINTIFF:**

Assistant United States Attorney

**FOR THE DEFENDANT:**

MS. MARY STILLINGER

MR. DONALD HILL-SAINZE

Attorneys at Law

\* \* \* \* \*

[2] THE COURT: The next matter is Guadalupe Montalvo-Murrillo.

MS. STILLINGER: Your Honor, my name is Mary Stillinger. I am with the firm of Caballero, Patello & Ortega, El Paso, Texas.

Mr. Bernard Panetta was hired by the defendant's family about three hours ago.

This is Don Hill-Sainze. He was appointed by the Court.

MR. HILL-SAINZE: I am now acting as local counsel.

THE COURT: And you agreed, Don Hill-Sainze, to go ahead and serve as local counsel? They are going to make arrangements with you to do that?

MR. HILL-SAINZE: Yes, it will be done.

[3] This defendant, do we have any report from the Pre-trial Services Office?

MS. STILLINGER: Hum-um.

AUSA: No, Your Honor.

MS. STILLINGER: Your Honor, if we could, I would like—I haven't seen the government's motion to detain.

THE COURT: Let me ask, what is the status of this? I have not had this gentleman before (inaudible)—to Illinois from (inaudible.)

MR. HILL-SAINZE: To the nearest available—(inaudible).

THE COURT: All right.

My name is John Darden, before you as US Magistrate for the US District of New Mexico. Federal law requires that I advise of you of your federal rights.

I have before me a complaint charged by the—signed by Mr. Hughes, in front of me, that you did on or about February 8, 1989 in Otero County, New Mexico, knowingly and intentionally possess with intent to distribute approximately seventy-two pounds of cocaine, a Schedule II narcotic controlled substance.

The maximum punishment—get to it real fast—maximum punishment if you are found guilty of these charges is up to the minimum of ten years in jail, up to life imprisonment and four-million-dollar fine, and if you are [4] imprisonment and four-million-dollar fine [sic], and if you are released from jail you have a minimum of five years of supervised release. This is the worst that can happen to you. As you can tell, it is very severe.

You have the right to employ your own attorney. If you are unable to afford counsel, you have the right to request that I appoint counsel for you, once Mr. Hill-Sainze has filed his appearance, you do not have to—until you have to proceed before the district judge, Don Hill-Sainze, you won't have to come back and traipse in before me, if that's convenient with you. However, Mr. Sainze is on the docket as far as notices in this court.

Since you do have counsel entered, I am required by the district judge to notify counsel that the district judge, Judge Conway, intends each of you—and the US Attorney is also here—to abide by Rules 9(b) 9(c) and Rule 9—Rule 11. He also will enter a discovery order shortly that will determine the discovery process.

You have the right to remain silent. Anything which you say may be used against you in the courts. You are not going to be asked to plead at this time, but if at any time you are asked to plead, I suggest you discuss this matter with your attorney and enter only a not guilty plea.

If you make a statement or if you are asked to make a statement at this point (inaudible) that you chose to [5] do so, you may terminate the statement and your decision to stop talking may not at any time be used against you in court.

With respect to the detention and release of the defendant, it's my understanding the Pretrial Services officer now has not conducted a report, is that correct?

AUSA: (Inaudible.)

THE COURT: All right. I think, therefore, in the interest of judgment [sic], that I should continue the detention hearing for a maximum of three working days, as the United States wishes to request. The detention and motion for detention will need to be filed. Otherwise, I will review the conditions of release and consider those within three working days.

MS. STILLINGER: Your Honor, it's my understanding that the government is required to move for detention in Chicago where he had his initial appearance. I think he waived his identity hearing, but I don't believe he waived the detention hearing at that point.

THE COURT: Well, that's a matter we will have to take up—you can take up with the district judge if you want to. As far as I am concerned at this time I am going to temporarily deny bail for a maximum of three working days and hopefully we may be able to come—when is next Monday?—Monday—

[6] AUSA: Monday is a holiday.

THE COURT: So on Tuesday we will have a detention hearing. I encourage you to furnish as much information as possible to the Pretrial Services officer. I do value the resources of their office.

Thank you.

AUSA: Thank you, Your Honor.

THE COURT: Defendant is remanded to the United States Marshal during this period of time.

(THEREUPON, the proceedings were concluded.)

Transcript of Detention Hearing  
(D. N.M. Feb. 21, 1989)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

89-CR-550

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

GUADALUPE MONTALVO-MURRILLO, DEFENDANT

DETENTION HEARING

BE IT REMEMBERED that on to-wit, the twenty-first day of February, 1989, the above-entitled matter came on for hearing before the HONORABLE UNITED STATES MAGISTRATE JOHN DARDEN, sitting in open court at Las Cruces, New Mexico.

APPEARANCES

FOR THE PLAINTIFF:

MR. WILLIAM L. LUTZ  
United States Attorney  
United States Courthouse  
500 Gold Avenue, Southwest  
Albuquerque, New Mexico 87102  
By: Ms. Paula Burnett

FOR THE DEFENDANT:

MR. NETHERWOOD  
Attorney at Law

ALSO PRESENT:

MR. HUGHES

\* \* \* \* \*

[2] THE COURT: We are proceeding now in criminal docket number 89-550 (inaudible), of this court, which is United States of America versus Guadalupe Montalvo-Murrillo.

We have a motion for detention filed by the Assistant United States Attorney Gorence. Opposition to that is filed by the defendant.

All the witnesses who are going to testify in the motion for detention, please raise your right hand.

(THEREUPON, the witnesses were duly sworn.)

THE COURT: Where is your translator? We will have to wait a moment until the translator comes. You have an [3] interpreter from the Pretrial Services Office?

I am going to take judicial notice of Pretrial Services officer and, therefore, I require that no testimony (inaudible) that the information that is before me be presented. However, you may present information supplemental, if it disagrees with it.

Now, we do want to wait, I guess, until we can find our translator, so we will be in recess for just a moment.

(THEREUPON, the proceedings were in recess.)

THE COURT: We have a motion for detention by the United States. Call your first witness.

MS. BURNETT: The government at this time would rely on two things that I would indicate to the Court. The first is that Guadalupe Montalvo-Murrillo has been indicted. I do not know if the Court is aware of that or has received a copy of that, but that is the first thing I would like to present to the Court. I do not have a certified copy, but I do have a copy if the Court would like to view that.

THE COURT: The clerk advised me that she does have a certified copy in her file.

MS. BURNETT: And the second thing I would do is just indicate to the Court that the indictment cites in excess of five kilograms of cocaine; that under the detention



guidelines that the burden of proof is upon the defendant to [4] prove that he is not a flight risk or otherwise a danger to the community.

And other than that, I would rely on the information that has been provided by the Pretrial Division that the Court has taken —

THE COURT: All right. I am taking judicial notice of the Pretrial Services report dated 2/21/89.

All right. For the defendant, you call your first witness.

MR. NETHERWOOD: Your Honor, we would like to supplement the report with information sought to tender to Mr. Rosa, but he was otherwise occupied in the day.

THE COURT: All right. (Inaudible.)

What is the proffer if you would, please?

MR. NETHERWOOD: If we were to put on testimony of these documents, that testimony would be that Mr. Montalvo was thirty-one years of age. He was born in Zacatecas, Mexico, and came to the United States in 1975 and obtained his permanent resident status in 1978.

The government, I believe, has the green card, the permanent residence card that was seized from him on the day of his arrest, which would show that he has been a lawful resident of the United States since 1978.

He obtained that in Chicago, Illinois, where he worked from 1975 to 1987. He worked at a company called [5] American Electric Cord Sets. We would tender to the Court the W-2's of Mr. Montalvo from American Electric Cord Sets for the year 1985 and 1986. We were not able to obtain any other facts than that.

THE COURT: What is the name of the employer again? Called American Electric Cord Sets?

MR. NETHERWOOD: American Electric Cord Sets.

THE COURT: Bensenville, Illinois?

MR. NETHERWOOD: Location of the company was at 1065 Sesame Street, Bensenville, Illinois, Mr. Montalvo

in 1985 lived at 10,500 Crown Road, Franklin Park, Illinois, and 1986, 10,500 Crown Road, Franklin Park, Illinois.

THE COURT: His residency in 1987 is —

MR. NETHERWOOD: His residence in 1987 was in Mexico. In 1988 it is in the United States. So from 1975 to 1988 he has resided in the United States, except for one year when he resided in Mexico.

THE COURT: And where did he live in 1988? In El Paso?

MR. NETHERWOOD: In 1988, Your Honor, he resides at 2000 Lake Herron, El Paso, Texas. I would tender to the Court payments to the tax assessor, receipts from the tax assessor collector, receipts received by his wife, Alicia Madrigal-Salgado, the insurance policy on the house in the name of Alicia Madrigal-Salgado, El Paso Electric Company utility bills for the past six months, which we were able to [6] locate in the name of Guadalupe Montalvo-Murrillo for 2000 Lake Herron, the Southern Union Gas Company bills in Mr. Montalvo's name, 2000 —

THE COURT: Any objection to that —

MR. NETHERWOOD: Herron.

THE COURT: — from the US with respect to the proof at this point?

MS. BURNETT: No, Your Honor.

THE COURT: With no objection the proffer will be received.

Do you have anything else to present by proffer?

MR. NETHERWOOD: Yes, Your Honor, to demonstrate to Your Honor that, in fact, Alicia Madrigal-Salgado is the wife of Mr. Montalvo, we have the marriage license from Franklin Park, Illinois, where they were married, tender that to the Court.



They were (inaudible) married at that time in a civil service in Mexico. I have not had an opportunity to get a translation of that document. I would request permission to submit the Spanish at a later date — submit the certified copy of the translation of that Spanish document.

THE COURT: That will be satisfactory.

Somebody around here speaks English?

MR. NETHERWOOD: We have two English marriage [7] certificates.

In addition to Mr. Montalvo being a lawful resident of the United States, his children are US citizens. His first son, Guadalupe Montalvo, Junior, was born May 25, 1981, West Lake, Community Hospital, in (inaudible) Park, Illinois, and tender copy of the birth certificate to the Court.

His second son, Eric Montalvo, was born August 27th, 1984, West Lake Community Hospital, (inaudible), Illinois. Tender that to the Court.

His third child, Alicia Montalvo, was born in El Paso, Texas, on November 13th 1987. His two older children — all of his children live with him and his wife at their home in El Paso, Texas. And his two older children attend school in El Paso, Texas.

Mr. Montalvo, as I say, worked for fourteen years.

THE COURT: Let's deal with the proffer that you presented dealing with that period of time.

Is there any objection to that portion of the proffer relating to his family background?

MS. BURNETT: I have no objection, Your Honor. I would like to look at the documents, but I don't believe (inaudible).

THE COURT: Proffer will be received subject to any rebuttal by the government.

[8] MR. NETHERWOOD: Documents showing that Mr. Montalvo, in 1987, purchased a home and two busi-

nesses in Mexico. The money used for the purchase of that came from his employment in the United States. He subsequently sold that home, used those funds for the purchase of his house in the United States.

Again, I would request permission to submit the Spanish and we would offer a certified translation of this when we have an opportunity.

Assets which are set forth in the Pretrial Services report (inaudible) show Mr. Montalvo owned the property in the United States; that is, his home. He has his family living here. In addition to his wife and three children, he has an uncle that resides in California. He has, I believe it is two uncles or three uncles, three cousins and three aunts that reside in the Chicago, Illinois, area.

THE COURT: All right.

MR. NETHERWOOD: I respectfully submit that based on that, (inaudible) in this case is appropriate, but before we even get to that we have filed in opposition to government's motion to detain.

THE COURT: All right. And I have this right here.

Now, Mr. Netherwood, what we need to do is have the US Attorney out of here in sixteen minutes, so I need you [9] to go ahead and, to the extent that you can, through some of your witnesses present their evidence through proffer and the government to the extent we need to get her out. The district judge has commanded her presence at one thirty.

To the extent you can, let's agree to what we can and leave the rest to (inaudible), the evidence is in, so as to your — as to each witness, I would like for you to identify your witness now and proceed to tell me, if you wish, what you can proffer that this witness will testify and if we can get it agreed to, fine. The witness would not have to testify. If not, the witness can go ahead and be subject to cross examination.

MS. BURNETT: Mr. Montalvo would testify as to the proffers that we have made, his employment, his family history, his marital status, his employment history, where he now lives, which essentially would be confirming that those documents do relate to him and, in fact, his work in places where it says he has worked and he has lived in places where the documents demonstrate that he lives.

THE COURT: Would you accept that?

MS. BURNETT: As to these documents, I would have no objection. I would request copies of them, if those are acceptable, and we will stipulate that testimony at this point.

THE COURT: That's fine. I do have a question for Mr. [10] Montalvo, and that is — as relates to your proffer, and that is, you have indicated he lived in the United States in 1988. The address in the Pretrial Services report indicates that he lived at that address on Lake Herron only five months, and I would like to know where he lived the duration of 1988.

I read your words (inaudible) I don't want him to answer unless his attorney authorizes it to, but —

MS. BURNETT: I will produce — you know, we have the copy of the deed. I believe the home was purchased in May of 1988, and I will request permission to supplement the record by furnishing that document to the Court.

THE COURT: All right. Your request — in any event, if the defendant is released, I am going to request proof of ownership of the property, and in a form satisfactory to the US Attorney, which the US Attorney's Office previously has regulations on file with the US District Clerk which do require a certified copy of the instrument, so that one way or the other he would have to prove his ownership.

Go ahead and proceed with your next witness, then.

MS. BURNETT: That's the testimony that we would have.

THE COURT: The other witnesses I saw testifying with their hand up were —

MS. BURNETT: An agent for the government.

THE COURT: I thought I saw more than one.

MS. BURNETT: I believe only one agent would have — I [11] would not call him subject to the acceptance by the Court of the report by Pretrial.

THE COURT: He would be just repetitious to that.

MS. BURNETT: Yes.

MR. NETHERWOOD: We would like for that agent or through whoever has it, put into evidence a copy of Mr. Montalvo's resident alien card which was taken from him at the time of the arrest. It's not in our possession. The government has it.

MS. BURNETT: I don't believe that Mr. — that it is in presently Mr. Hughes' possession, but we would stipulate that it does, in fact exist, and he had his green card dating from 1979, is that correct?

MR. NETHERWOOD: The temporary card.

MS. BURNETT: Temporary, so we would stipulate it did, in fact, exist and was seized by the government upon arrest.

THE COURT: All right. I think another factor initially agreed to, and that is to move this thing on the allegations in the (inaudible), and I am going to indicate that on February (inaudible) '89, I issued an arrest warrant for the defendant; that he was taken to the Northern District of Illinois.

And I don't know — Ms. Burnett, just for the purposes of this record, when was he returned to New Mexico? I want to be quite clear that I am not going to rule on the — [12] I am going to leave it up to the district judge to rule on



the issue of the appropriateness of the—what was done and whether I am correct in entering a detention order.

It is my intention to order a detention order or order for release, one or the other, and let you raise the issue with the district judge who has this case, as to the appropriateness of the action of the government.

So, therefore, I would like to get as a matter of record before this court what we know; that the defendant was arrested on or about February 8, 1989. He was taken on that date to the Chicago, Illinois area and apparently he was not brought before a United States Magistrate until on or about February 16, 1989, at which time I continued the detention hearing over the objection—let's see—over the objection of the defendant, and it was set for today.

And at this point in time we are here for court and I will make note—am I correct on that information?

MS. BURNETT: Yes, Your Honor. The only item that I would add, which I have no reason to know and I believe it is alluded to in the motions, however, that he did actually appear in front of a magistrate in Illinois. I do not know the date of that, but I believe Mr. Hughes could produce that date.

THE COURT: Mr. Hughes, when is that?

MR. HUGHES: I believe some (inaudible) probably Friday, [13] February 10th.

THE COURT: All right. In Illinois?

MR. HUGHES: Yes, sir.

MS. BURNETT: And this is based, Your Honor, upon the arrest warrant that was issued from this court as to his appearance in Illinois.

THE COURT: I have a copy of a document that is unsigned that indicates something that is dated February 10, 1989. I just want to make sure the record is correct, and I will take judicial notice of those facts.

Is there anything that you wish to supplement that with, Mr. —

MS. STILLINGER: Yes, sir, Your Honor. Your Honor stated that February 16th the detention hearing was continued. I would like the record to show I believe the government did not move for pretrial detention of the defendant in this case until February 17th, 1989. And I would ask the Court to take judicial notice of file in this case.

I have a copy of the government's motion to detain which was filed September—excuse me, February 17th, 1989—

THE COURT: That's fine.

MS. STILLINGER: —the day after Mr. Montalvo's appearance in this district and the apprehension, of 18 USC 3142: "The hearing shall be held immediately upon the person's first appearance."

[14] And I invite the Court's attention to the cases that we have cited, and there is even one case on (inaudible) that is filed two days untimely. The rule says what it says, an individual cannot be detained without bond absent the government moving at the initial appearance.

They have not done so and we effectively submit that this Court may not detain this individual without bond.

THE COURT: Excuse me. Part of your comment was proffer and part of it was argument. With respect to the factor that—the fact that you have asked me to take judicial notice of the witness—that the defendant—that the US Attorney did not at the time of the initial appearance before myself request detention of the defendant, the Court will take judicial notice of that fact.

At the commencement of the detention hearing it is my recollection the record will reflect that I immediately continued that phase of the initial appearance and continued it for a maximum of three working days.

All right.

MS. BURNETT: If I may briefly supplement that, if this is the record of the Court, that at that time the US Attorney's Office was given a period of time within which to file the motion and that, in fact, occurred on February 17th.

THE COURT: As it stands now, you are going to have a hearing de novo the loser, I suppose, if you wish, before [15] the US District Court. This—the following will be the order of release of this defendant (inaudible) effective—and you have a hearing today, Ms. Burnett?

MS. BURNETT: Yes, Your Honor.

THE COURT: It will not be effective until ten AM tomorrow because the US Attorney's lack of office respects in Las Cruces at this time and office staff in order to file notice of appeal, if it wishes to. If it does not wish to file notice of appeal by that time, the defendant in all other respects, has complied with the order of release then and can go.

It is ordered the defendant's release be subject to the following conditions: He shall not commit any offense in violation of federal, state, or local law while on release in this case. He shall advise the Court immediately, including defense counsel and US Attorney, in writing prior to any change in address and telephone number. He shall appear at all proceedings as required and shall surrender for any sentence imposed as directed.

Now, I am depending upon the fact that the defendant owns his house free and clear, and it has a value of approximately eighty-five thousand dollars, and I am going to set a fifty-thousand-dollar bond to be secured by the following: One, the co-signature of a spouse and a deed of trust in a form approved by the US Attorney's Office securing [16] that house, signed by himself and his spouse.

Part of the requirements are going to be to prove that he does, in fact, own the house. There are procedures before the US Attorneys. The US Attorneys file with the district clerk how to prove ownership and how to prove value, and I am presuming the value of approximately eighty-five thousand and give or take five thousand.

I can hold him to that exact amount, but—and that there should be equity of approximately fifty thousand dollars, given the homestead exemption that he and his spouse would have under the laws of the State of Texas.

In the alternative, a bail bond or deposit of cash would be sufficient, so you don't have to come back to me if you are having problems with that.

The defendant is ordered placed on third-party custody of his spouse, who must agree to supervise him in accordance with the conditions of release, use every effort to assure his appearance at all Court proceedings and notify the Court immediately in event he violates any condition of release and disappears.

I find that the above conditions that I have set will not assure his appearance in Court or the safety of the community without these conditions of third-party custody, and in addition during his release he shall maintain or actively seek employment or in the alternative, maintain or [17] commence an educational program.

His travel is restricted to the El Paso County, Texas area, except to come to New Mexico for Court appearances or appearances required by his local counsel in New Mexico. The United States Pretrial Services Office may expand the travel restriction anywhere within the United States, but not into the Republic of Mexico.

He is to avoid all contacts with material witnesses identified in the complaint, and any material witnesses identified in writing by the US Attorney to his attorney in writing.



If there is a complaint as opposed to indictment that did indicate a material witness, why, he is to report on a regular basis to the Pretrial Services Agency. He is to have a dusk to dawn curfew. However, the Pretrial Services officer may expand the curfew requirements without having to come back to Court. Until they do, however, it is a dusk to dawn curfew on a daily basis.

He is to refrain from possessing a firearm, destructive device or other dangerous weapon. He is to refrain from excessive use of alcohol or any use or possession of narcotic drug unless prescribed by a licensed medical practitioner. He is to surrender any passport that he has to the Pretrial Services officer and must obtain no passport.

[18] Finally he is to contact his attorney, either Mr. Simms or one of his Texas attorneys as designated or someone within their office that they may designate, to receive the communication once a week. Your attorney, as an officer of this Court, must notify me if he does not comply with this condition and he will be promptly arrested. However, I impose this restriction for your benefit in that matters will proceed promptly in this Court and your attorney or his office must know how to get ahold of you.

And if you are working like I want you to be, I don't want them having to arrest you at work. I would like to see (inaudible). Should you fail to appear on the charges now pending against you, you face a further felony charge, maximum punishment of which is up to fifteen years in jail and fine of up to two hundred and fifty thousand dollars or both.

You understand the punishment if you fail to appear?

MR. MURRILLO: Yes.

THE COURT: Do you understand the conditions that I have set?

MR. MURRILLO: Yes.

THE COURT: The United States Marshal is ordered to keep the defendant in custody until notifying the clerk that (inaudible) has posed bond and has complied with all [19] conditions of release.

All right. The issues that you have raised as far as propriety of the detention hearing, it is something that you can raise before District Judge Conway, if there is appeal, otherwise, the government (inaudible) does not make the conditions of release.

All right. You can leave if you want to and go ahead and arraign the defendant.

(THEREUPON, Ms. Burnett left the proceedings.)

THE COURT: Will you please stand up?

Will you please state your name aloud?

MR. MURRILLO: Guadalupe Montalvo-Murrillo.

THE COURT: Your social security number?

MR. MURRILLO: I don't have a number.

THE COURT: Before the party is released he must —

MR. MURRILLO: I don't remember the number.

THE COURT: Before the defendant is released he must furnish his social security number to the district clerk, and he may do that through his attorney.

Your date of birth?

MR. MURRILLO: (Inaudible) '67.

THE COURT: Telephone number?

MR. MURRILLO: (Inaudible) 85-8199.

THE COURT: I suggest, since we are using the translator to translate to you, that you respond in Spanish, please.

[20] Your area code is what? Area code of the telephone?

MR. MURRILLO: 915.

THE COURT: And your residence address?

MR. MURRILLO: 2000 (inaudible) El Paso, Texas.

THE COURT: That's — zip code?

MR. MURRILLO: 79936.

THE COURT: Extent of your education?

MR. MURRILLO: Four years.

THE COURT: Are you currently or have you recently been under the care of a physician or psychiatrist?

MR. MURRILLO: No, sir.

THE COURT: Have you been hospitalized for previous narcotice addition?

MR. MURRILLO: Never.

THE COURT: Mr. (inaudible), do you have a copy of the indictment charging your defendant here?

UNIDENTIFIED SPEAKER: Yes, I do.

THE COURT: Do you wish we read it in open Court?

UNIDENTIFIED SPEAKER: No. We would waive the indictment.

THE COURT: And how does he plead?

UNIDENTIFIED SPEAKER: Not guilty, Your Honor.

THE COURT: Thank you.

Not guilty plea, counsel to file (inaudible) [21] report and any motions within ten days. I am entering a discovery order today that District Judge Conway has directed for all his cases. You may get with the district clerk as to receive a copy of that discovery order.

Case is assigned the Honorable John Conway, who will notify you through your attorney of the trial date.

Thank you.

(THEREUPON, the proceedings were concluded.)

**Transcript of Appeal from Detention Order  
(D. N.M. Feb. 23, 1989)**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

Criminal Case No. 89-86JC

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

GUADALUPE MONTALVO-MURRILLO, DEFENDANT

**TRANSCRIPT OF PROCEEDINGS**

**APPEAL FROM DETENTION ORDER**

BE IT REMEMBERED that on the 23rd day of February, 1989, at 10:36 a.m., the above-entitled matter came on before the HONORABLE JAMES A. PARKER, United States District Judge sitting at Las Cruces, New Mexico.

**APPEARANCES**

**FOR THE PLAINTIFF:**

THE HONORABLE WILLIAM L. LUTZ  
U.S. Department of Justice  
United States Attorney  
District of New Mexico  
Post Office Box 607  
Albuquerque, New Mexico 87103  
BY: ROBERT GORENCE, AUSA

## FOR THE DEFENDANT:

MARY STILLINGER, ESQ.  
Cabellero, Panetta & Ortega  
Attorneys at Law  
521 Texas Avenue  
El Paso, Texas 79901

## ALSO PRESENT:

JUAN JOSE PENA  
Official Court Interpreter  
U.S. District Court  
Post Office Box 689  
Albuquerque, New Mexico 87103

[89]

\* \* \* \* \*

## ALFREDO ORTEGA

a witness called on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. GORENCE:

Q Sir, could you state your name?

A Alfredo Ortega.

Q Mr. Ortega, what is your occupation?

A I'm a Special Agent with the Drug Enforcement Administration.

Q In that capacity, are you familiar with the events that led up to Mr. Montalvo's arrest and his detour to Chicago, Illinois and his return back here to New Mexico?

A Yes, I am. I'm the resident agent in charge of the DEA office here, so I was technically the supervisor in that entire operation.

Q When did Mr. Montalvo return to New Mexico?

A I received a call around 5:00 o'clock our time by our agents, advising that they were coming back and they should be arriving in Las Cruces around 11:00 or 11:30.

Q This is 5:00 o'clock on Friday, February 10th?

A That's correct.

Q When did Mr. Montalvo arrive back here in Las Cruces?

[90] A The next call I got was from, I believe it was, Richard Sanders, an agent in my office, the next morning, and said they'd come in and they had lodged Mr. Montalvo in the jail.

Q This was Saturday morning though, right?

A This would have been Saturday morning, yeah.

Q What happened on Monday morning, the 13th?

A Monday morning, as is our usual procedure, we contacted Pre-Trial and the Magistrate's Office that we have an arrest to be initialed then or a detention hearing or whatever the case may be.

Q Was that done in this case with Mr. Montalvo?

A To the best of my understanding, yes, it was.

Q Did you actually make a call to the Magistrate?

A I did not personally make the phone call but I went back. But I can remember right now that I seen him, I remember, sometime in the afternoon; either I was called or one of the agents told me that everything had been set up for the 16th.

Q And you got that information on the 13th?

A Yes, sir.

Q Do you remember who told you that?

A I can't, right now. I want to say one of the agents told me, but for some reason, I keep thinking that I got a phone call and it might have been from the Magistrate's [91] Office or from your office up in Albuquerque, but I was — beings as I'm a supervisor, I want to make sure that everything was done as it was supposed [sic] to be and I



remember explicitly that afternoon, a date of the 16th was given.

Q Well, what is the standard procedure then that you said it's ordinarily complied with in regard to when you have custody of a prisoner and what do you do with the Pre-Trial Services and the Magistrate in the ordinary custom and practice?

A Okay. And I think this procedure holds for everybody, but from the arresting officer, then the next morning, I call up to the Magistrate's and I advise them that we've made an arrest and the charges against him, the date of the arrest, the name of the individual, their social security number and his address.

Then I call up the Pre-Trial Services and give them the same information. They usually return my phone calls saying that Judge Darden will be available to have a hearing on such and such a date and then I make sure that the Defendant's brought to the courthouse at that time.

Q Do you have firsthand knowledge that that was done in this case, or did you witness any other agent —

A I would have to say, yes, because I was pretty much on [92] top of the situation and everything was running on course,

Q Okay. So in other words, in all likelihood —

A I think if we hadn't called or if something hadn't been set up, I would have remembered, and I would've said either we make the phone call or I'd make the phone call myself right now, you know. All my agents know that that's the procedure and, since I've been here, that's never happened that we haven't called, you know.

Q Do you know whether or not whoever did call over to the Magistrate's Office informed them of procedural irregularities that had occurred, — And I use the word "irregularities" loosely — but I mean the whole idea of the controlled delivery back to Chicago and an initial ap-

pearance back in Chicago, do you know if that was relayed to the Magistrate?

A Not to my knowledge, because they only really ask for his name, his pertinent information. They don't ask for any other details.

Q You said this is the customary practice, as far as informing them that somebody is now in custody on a complaint or an indictment has been returned. Do you make it a part of your practice, Agent Ortega, to take it upon yourself or make it incumbent upon yourself to set up hearings for the Magistrate, to tell them when they ought to set things in a timely fashion?

[93] A No, sir.

Q Why is that?

A Well, I'm not the Magistrate. I'm not the Judge. They hear our cases when their calendar permits them.

Q And the Magistrate down here in Las Cruces is a part-time Magistrate; is that correct?

A Yes, sir.

Q And, ordinarily, when does he schedule things to come up for hearing, you know, in conformity with his schedule?

A When he has the next available time.

Q Thursday afternoon or Thursday mid-morning, is there a significance to that date? Because I've always been under the assumption that that's their common time when Judge Darden has court.

A Thursday is probably one of the times that he has hearings the most, and on any given — on the day of any week, Thursday is probably the day that he has them the most.

Q Has there ever been a situation in the past where you've tried to expedite a hearing?

A There's been a couple of times.

A And what's been the result of that?



A If the Judge is not available because he's not — out of town or he's got other previous commitments or something, the U.S. Attorney will instruct me as to what to do [94] next. There's been a couple of times that I've gone before a state judge. There's other times that an individual has been held in jail until the next available time. Or, basically, it's just what the U.S. Attorney's Office advises us to do.

Q But you did testify that you don't take it upon yourself to tell the Magistrate when he has to set things down for hearing.

A No, sir.

MR. GORENCE: I pass the witness, Your Honor.

#### CROSS-EXAMINATION

BY MS. STILLINGER:

Q Okay. You said somebody — you think somebody else in your office called the Magistrate's Office; correct? Or —

A I don't remember, myself, personally picking up the phone call (sic) and calling up. I wasn't the arresting Officer. But I remember discussing it with people in my office and I remember that afternoon, somebody coming back and, that I don't remember, whether it was one of the agents told me or whether I got a phone call and said the detention hearing would be the 16th.

Q So you don't know if, for instance, the person actually talked to the Magistrate or talked to the Clerk of the Magistrate?

A We never talk to the Magistrates. We always talk to the [95] Clerk.

Q And you don't know — You said probably that the — they would just give the Clerk the information, the name, address, social security number; is that —

A Yes, sir. I mean, yes, ma'am. I'm sorry.

Q And so, under those circumstances, it would be very likely that the Clerk, the Magistrate's Clerk might think that this is somebody that was just arrested; right?

A No. Because one of the things they ask you is the date of arrest.

Q So they would've given the date of February 8th or February 10th.

A Well, it would've been February 8th and they also — one of the things that they always ask us is the location of the arrest.

Q Do you think that would have been Chicago, or, or —

A Oh, I guess it might have —

Q — if they would've given —

A — been — If I'd have made the phone call, I would have said February the 8th at the Orogrande checkpoint; that would've been my response.

Q Okay. But you don't really know what the, what this person told the Magistrate's Clerk?

A No, ma'am.

Q And do you know if — Would somebody normally tell the [96] Magistrate's Clerk if there had been a pending motion to detain?

A Basically, the procedure that we use is, we get the authorization from the Assistant United States Attorney and we mention it to the Clerk that the Government is going to file a motion to detain.

Q Well, you might mention that the Clerk is going to, but —

A The other time is, if the U.S. Attorney happens to be here, then we really don't get involved in that stuff.

Q Um-hum. Do you know if — Well, you — So you don't know if this person, whoever it was that called the Clerk, mentioned that there was a pending motion to detain?

A Oh, the discussions that I had on Monday morning is, we had — Our feelings were that we wanted a detention, but like I said, whether it was actually mentioned or not, it —

Q Might even — It might even have told the Clerk that they were planning on moving to detain the Defendant?

A It's possible, yes, ma'am.

Q Okay. Do you know if Magistrate Darden had court on Monday, Tuesday or Wednesday of that week? That would be the 11th, 12th, 13th, Monday, Tuesday and Wednesday of the week that the Defendant had been initialed?

A Right now, I don't remember when he had court or not.

[97] Q Okay. So you don't know if it was the first available date that he could hear this?

A That's correct.

Q When you found out that it was set for the 16th, did you consult with the U.S. Attorney and give him that information or ask advice about what to do since it wasn't going to be happening for four days?

A Well, usually, when there's a detention hearing, a U.S. Attorney will come down and handle that and, if I remember correctly now, that, I remember getting the name of the U.S. Attorney that was coming down, but I don't remember when.

Q I just want — You said that sometimes previously, you tried to expedite hearings and you might try to contact the U.S. Attorney; but that wasn't done in this case, was it?

A Yes, it was.

Q Oh, it was?

A Um-hum.

Q Okay. So you contacted the U.S. Attorney. Did you try to expedite it, say, something along the lines that the

hearing isn't scheduled until Thursday, what shall we do? Or —

A No. If I remember correctly, when we got the date of the 16th, it didn't strike me strange because of the fact [98] that he had — And, again, like I said, this is a legal thing, — that he had been initialed up in Chicago, so did we have a time frame? Not that I — You know, that wasn't my concern anymore.

Q Um-hum. Um-hum. So, basically, I guess what I was getting at, you followed the standard procedure in calling the Magistrate on Monday and informing their office that you had somebody, giving them this standard information. But, aside from that, did you do anything extra to expedite that hearing?

A The only thing that I remember was, I talked to one of the agents and they had filed some paperwork in Chicago and I said make sure that the U.S. Attorney gets that as soon as possible.

MS. STILLINGER: Okay. Thank you.

THE COURT: Any redirect?

MR. GORENCE: No, Your Honor.

THE COURT: Thank you, Mr. Ortega. Any more witnesses on behalf of the Government?

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ORDER GRANTING CERTIORARI

**Supreme Court of the United States**

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No. 89-163

UNITED STATES, PETITIONER

v.

GUADALUPE MONTALVO-MURILLO

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ORDER ALLOWING CERTIORARI. Filed October 2, 1989.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted.

October 2, 1989